

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 15, 2009 Session

HERMANN HOLTKAMP GREENHOUSES, INC.
v.
METROPOLITAN NASHVILLE AND DAVIDSON COUNTY,
TENNESSEE, JO ANN NORTH, Assessor of Property for Davidson County,
and TENNESSEE STATE BOARD OF EQUALIZATION

Appeal from the Chancery Court for Davidson County
No. 06-1742-III Ellen Hobbs Lyle, Chancellor

No. M2009-00345-COA-R3-CV - Filed February 2, 2010

This appeal concerns the classification of property for taxation purposes. The petitioner commercial business grows plants in large greenhouses erected on its land. The county assessor of property classified the greenhouses as real property, to be taxed as such. The petitioner taxpayer appealed the assessor's classification, contending that the greenhouses are personal property. An administrative law judge concluded that the greenhouses are personal property, taxed at a lower rate than real property. The assessor appealed to the state board of equalization. The state board of equalization reversed the ALJ's decision and concluded that the greenhouses are real property. The petitioner taxpayer then filed a petition for judicial review of the state board's decision. On cross motions for summary judgment, the trial court concluded that the greenhouses are real property and dismissed the taxpayer's petition. The petitioner taxpayer now appeals. Utilizing the common law of fixtures, we find that the greenhouses are properly classified as real property. Thus, we affirm the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and DAVID R. FARMER, J., joined.

Larry D. Crabtree and Jo Ann Rosenblum, Nashville, Tennessee, for the appellant, Hermann Holtkamp Greenhouses, Inc.

Sue B. Cain, Director of Law, J. Brooks Fox, and Christopher M. Lackey, Nashville, Tennessee, for the appellees, Metropolitan Government of Nashville and Davidson County and Jo Ann North, Assessor of Property for Davidson County

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Gregory O. Nies, Nashville, Tennessee for the appellee, Tennessee State Board of Equalization

OPINION

FACTS AND PROCEEDINGS BELOW

Background

The facts in this case are undisputed. Petitioner/Appellant Hermann Holtkamp Greenhouses, Inc. (“Holtkamp”) owns and operates a wholesale botanical nursery business on thirty-one acres of land in Davidson County, Tennessee, that it purchased in 1977. Holtkamp’s business consists of growing African violets, begonias, and other plants for distribution to retail nurseries. Holtkamp grows the plants in seven greenhouses, most of which were erected on its property between 1986 and 1989. The greenhouses enclose some 436,000 square feet of space, covering almost a third of the 31-acre tract of land.

The ultimate issue in this case is whether the greenhouses should be classified as real property for tax purposes. As resolution of the issue requires an understanding of how the greenhouses are erected on the property and how easily they can be removed, we will outline the facts pertinent to these factors.

Typically, a greenhouse is assembled on-site. For greenhouses the size of Holtkamp’s, the frame consists of a series of metal poles, measuring four inches wide and two inches deep, connected with bolts and screws and spaced about ten feet apart. To assemble the frame, each metal pole is bolted to a concrete post that is placed about two feet deep into the earth. The concrete posts are approximately two and a half feet long; they protrude about six inches above the ground, to allow the metal poles to be bolted to them.¹ About fifteen feet above the ground, the roof angles upwards from the wall, and the two sides of the roof meet

¹In this case, Holtkamp poured additional concrete on a portion of some of the metal poles to protect them from machinery in the greenhouses that could accidentally collide with the poles.

about twenty feet above the ground. After the metal frame is assembled, glass panels are inserted into grooves set in the frame. The exteriors of the greenhouses are then sprayed with foam as insulation, to serve as a heat shield.

To dismantle the greenhouses, one need only reverse the assembly process. The glass panels are removed first, and the metal frame is then unbolted from the concrete posts and taken apart. The concrete posts can be broken up and removed.

On Holtkamp's property, the terrain is uneven. In order to level the surface underneath the greenhouses, Holtkamp poured additional concrete footings and laid concrete blocks. These additional concrete sections are generally about one to two feet in height and approximately ten inches wide. If the greenhouses were dismantled and relocated, this additional concrete would have to be removed as well.

Within the greenhouses, Holtkamp laid concrete walkways approximately three and a half inches thick. The walkways are about two feet wide and run the length of the tables that support the growing plants. The majority of the floor space inside the greenhouses is natural earth covered with gravel; however, in some areas, Holtkamp laid concrete slab flooring, varying from four to ten inches in thickness. If the greenhouses were dismantled and relocated, the concrete walkways and slab flooring would also have to be broken up and removed.

In order to control the climate within the greenhouses and to water the plants, Holtkamp installed five boilers, a sprinkler system, and heating and cooling apparatus. The greenhouses are also connected to electricity, gas and water utilities. Most of the utilities run in conduits above the ground, either attached to the sides of the greenhouses or hanging from the ceilings.² In addition, Holtkamp built a subterranean concrete tunnel to connect at least two of the greenhouses. Under the cover of the greenhouses, Holtkamp built restrooms complete with plumbing fixtures and sewer connections, an employee locker room, and a cafeteria, all by using concrete blocks.

Administrative Proceedings

Prior to 2001, the Assessor of Property for Davidson County ("Assessor") had classified Holtkamp's greenhouses as real property. For the tax year 2001, the Assessor classified the greenhouses in the same manner, and the resulting assessed use value of

²About one percent of the pipes transporting water, two hundred feet of electrical wiring, and two hundred feet of gas pipeline are below the ground.

Holtkamp's property was \$812,192.³ When Holtkamp learned that greenhouses in another county had been classified as personal, rather than real, property, Holtkamp appealed the Assessor's 2001 classification of the greenhouses and its assessment of the property to the Davidson County Board of Equalization ("County Board"). The County Board upheld the Assessor's assessment.

Finding no success with the County, Holtkamp appealed the matter to the Tennessee State Board of Equalization ("State Board") in September 2001. Meanwhile, as Holtkamp's appeal to the State Board on its 2001 assessment was pending, the Assessor adopted the values of the 2001 assessment for the 2002 assessment of Holtkamp's property. As with the 2001 assessment, Holtkamp appealed the 2002 assessment first to the County Board, which upheld the assessment, and then to the State Board. Holtkamp's appeals of the 2001 and 2002 assessments were then consolidated, and an amendment was allowed to include the 2003 tax year.

Holtkamp's consolidated appeal to the State Board was heard by Administrative Law Judge ("ALJ") Forest M. Norville in April 2004. ALJ Norville later issued an initial decision and order finding that the greenhouses should be classified as personal property. In his decision, ALJ Norville emphasized the portability of the greenhouses, noting that they were easily disassembled, and that the cost of relocating the greenhouses was only twelve percent of the cost of purchasing new greenhouses. Classifying the greenhouses as personal property, the ALJ ordered the assessed use value of Holtkamp's property for tax years 2001, 2002, and 2003 to be \$237,192.⁴

The Assessor appealed the ALJ's order to the Assessment Appeals Commission of the State Board ("Appeals Commission").⁵ The Appeals Commission conducted a hearing on the Assessor's appeal, at which Holtkamp Vice President Reinhold Holtkamp, Jr. ("Mr. Holtkamp") testified and several photographs of the greenhouses were entered into evidence. At the close of the hearing, the Appeals Commission voted unanimously to classify

³The Assessor valued Holtkamp's land at \$43,668 and buildings, including the greenhouses, at \$3,205,100 for a total value of \$3,248,768. Holtkamp's property was assessed at the farm rate of 25% to arrive at an assessed use value of \$812,192.

⁴ALJ Norville concurred in the Assessor's valuation of Holtkamp's land at \$43,668; however, the reclassification of the greenhouses decreased the building value from \$3,205,100 to \$905,100, for a new total property value of \$948,768. Assessing the property at the farm rate of 25% resulted in an assessed use value of \$237,192.

⁵At this point, the Tennessee State Division of Property Assessment filed a motion to intervene in the matter. The motion was granted.

Holtkamp's greenhouses as real property. The Appeals Commission later issued a written order to this effect, in which it focused on factors indicating that the greenhouses were intended to be permanent. In particular, the Appeals Commission emphasized the size of the greenhouses, the many years that the greenhouses had been on the property, and the fact that the greenhouses included restrooms and a cafeteria. The Appeals Commission stated that "[a]lthough clearly these greenhouses were intended to be moveable, perhaps to be reconfigured more efficiently to the operator's purposes, it is equally clear they were not intended to be moved." While relocating the greenhouses would be less costly than purchasing new ones, the Appeals Commission noted that "[t]aking down these significant structures and removing their extensive concrete foundations is a significant business displacement, not merely a matter of a few minutes unbolting." Accordingly, the Appeals Commission reversed the ALJ's decision and reinstated the Assessor's classification and assessment, resulting in an assessed use value of \$812,192 for Holtkamp's property.⁶

Judicial Proceedings

Holtkamp then filed a petition for judicial review of the decision of the Appeals Commission, pursuant to Tennessee Code Annotated § 67-5-1511,⁷ in the Davidson County Chancery Court ("trial court"). The petition named as respondents the Respondent/Appellees

⁶Holtkamp filed a petition for review of the Appeals Commission decision by the full State Board. When the State Board failed to enter an order to review within the forty-five day period provided by Tennessee Code Annotated § 67-5-1502(j)(1), the decision of the Appeals Commission became the final action of the State Board.

⁷From 1998 to 2008, the statute provided:

(a) The action of the state board of equalization shall be final and conclusive as to all matters passed upon by the board, subject to judicial review, and taxes shall be collected upon the assessments determined and fixed by the board.

(b) The judicial review provided in subsection (a) shall consist of a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue. The petition for review may be filed in the chancery court of the county where the disputed assessment was made or in the chancery court of Davidson, Washington, Knox, Hamilton, Madison or Shelby County, whichever county is closest in mileage to the situs of such property. If the situs of the property is in Knox, Hamilton or Shelby County, then the petition for review may alternatively be filed in Davidson County at the election of the petitioner.

T.C.A. § 67-5-1511 (2006). The statute was subsequently amended, effective April 1, 2008; however, the amendment is not applicable to this appeal.

Metropolitan Government of Nashville and Davidson County (“Metro”) and Jo Ann North, the Assessor of Property for Davidson County. In the petition, Holtkamp argued that the Appeals Commission “did not properly consider Tennessee jurisprudence” in classifying the greenhouses as real property under Tennessee Code Annotated § 67-5-501. Holtkamp asserted that the decision of the Appeals Commission was not supported by material evidence, was arbitrary and capricious, and constituted an abuse of discretion.

In its answer to Holtkamp’s petition, Metro asserted that the State Board was an indispensable and necessary party. After some dispute, the State Board was made a party to the lawsuit by order of the trial court. The administrative record was filed, and discovery ensued. Thereafter, based on the undisputed facts, the parties filed cross-motions for summary judgment.

The trial court issued its memorandum opinion and order on the parties’ cross-motions on October 24, 2008. The trial court observed that the criss-cross of administrative decisions on the classification of the greenhouses resulted from differing emphasis on undisputed facts indicating either the permanence or the movability of the greenhouses. The trial court observed that the greenhouses have characteristics of being both permanent and portable, and concisely summarized the facts indicating both. The trial court then stated: “In the face of facts supporting both sides, the Court studied the law for a legal principle to break the tie.” To “break the tie,” the trial court turned to the common law of fixtures. In particular, the trial court relied upon the common ownership presumption, *i.e.*, when the owner of a chattel also owns the real property to which the chattel is attached, a presumption arises that the owner intended the chattel to be a part of the realty.⁸

Reviewing the evidence in light of this principle, the trial court concluded that the evidence was not sufficient to rebut the presumption under the common law that Holtkamp, as the owner of both the greenhouses and the land on which they stood, intended that the greenhouses become part of the real property. The trial court acknowledged that Mr. Holtkamp had testified that he was investigating whether to relocate the business to lower expenses, and that he would move the greenhouses if relocation occurred. The trial court described this testimony as “hypothetical.” Thus, the trial court denied Holtkamp’s motion for summary judgment, granted the Respondents’ cross-motion, and dismissed Holtkamp’s petition.⁹

⁸The trial court cited 35A AM. JUR. 2D *Fixtures* § 31 (2006) in support of this statement of the common law.

⁹In the order, the trial court also concluded that one of Holtkamp’s proffered witnesses, Dirk Herens
(continued...)

Following the entry of the trial court's October memorandum opinion, Holtkamp filed a motion to alter or amend the judgment under Rule 59.04 of the Tennessee Rules of Civil Procedure. In the motion, Holtkamp asserted that the trial court, after characterizing the evidence as a "tie," erred in dismissing the petition because tax statutes are to be construed liberally in favor of the taxpayer. Additionally, Holtkamp proffered newly discovered evidence showing that Holtkamp did not intend to permanently attach the greenhouses to the underlying realty. The newly discovered evidence apparently consisted of the affidavit of Mr. Holtkamp, in which he stated that Holtkamp was considering a sale of the underlying realty and was actively investigating specific sites for relocation of the greenhouses.

In an order entered January 16, 2009, the trial court denied Holtkamp's motion to alter or amend but modified the prior October order. Stating that "it is unclear whether Tennessee has adopted" the common ownership presumption, the trial court struck "all mention and application of the presumption" from the prior order. The trial court then reviewed the applicable caselaw and reconsidered the evidence in light of it. From the caselaw, the trial court determined that Holtkamp's intent remained the key question, and discussed the evidence indicating intent:

The following facts establish that petitioner intended to make the greenhouses permanent: 1) the greenhouses were erected about 20 years ago; 2) the greenhouses cover 436,000 square feet of space; 3) the greenhouses are connected to the real property through utility connections; 3) [sic] the greenhouses include numerous amenities, including bathrooms and lunchrooms for the employees; 4) the greenhouses are bolted down to concrete posts, footings, and slabs; 7) [sic] cinder blocks are used in some places to create a level surface above ground upon which certain greenhouses panels have been attached; 8) a concrete tunnel connects the greenhouses; 9) moving the greenhouses would not be easy; and 10) petitioner owns both the land on which the greenhouses are located and the greenhouses.

⁹(...continued)

("Herens"), was an expert witness. Herens is engaged in the business of buying and selling greenhouse components, and had sold such components to Holtkamp in the past. He claimed personal knowledge of the market for such components in the United States, Canada and Europe. Because Holtkamp did not disclose Herens until after the deadline for the disclosure of expert witnesses in the agreed scheduling order, Metro had objected to the admissibility of the testimony in Herens's affidavit. The trial court overruled Metro's objection and noted that it would have extended additional time under Rule 56 of the Tennessee Rules of Civil Procedure for Metro and the State Board to conduct discovery on the matters addressed in Herens's affidavit.

In determining an owner's intent, courts must look at not just the subjective intent of the owner but the objective intent as well. . . . Looking at petitioner's intent using the objective standard, it is clear that petitioner intended to make the greenhouses permanent and part of the real property. It is unlikely that a reasonable person who intends for the greenhouses to be merely temporary would add the amenities and designs to the greenhouses that petitioner has. Similarly, it is unlikely that "temporary" greenhouses would sit at the same location for decades. Although some evidence in the record may indicate an intention to make the greenhouses temporary, they simply do not outweigh the other evidence in the record. Having looked at the evidence applying the correct standard, the Court concludes it previously erred when it concluded there was a tie in the evidence. The evidence is clear that petitioner intended to make the greenhouses permanent.

Thus, the trial court found that Holtkamp intended to make the greenhouses permanent, and consequently concluded that the greenhouses should be classified as real property. Holtkamp now appeals.

ISSUES ON APPEAL AND STANDARD OF REVIEW

On appeal, Holtkamp raises the following issues:

- 1) Whether the trial court erred in failing to find that the undisputed facts showed that Holtkamp's greenhouses satisfied the definitions of either or both "tangible personal property" and/or "commercial and industrial tangible personal property" under a strict construction of the statutes;
- 2) Whether the trial court erred in looking beyond the clear and unambiguous statutory definitions of "tangible personal property" and/or "commercial and industrial tangible personal property" to certain common law rules in order to classify Holtkamp's greenhouses for property tax purposes;
- 3) Whether the trial court erred in finding, as controlling, the "objective" intent instead of the "stated" intent of Holtkamp in attaching the greenhouses to the realty, when the taxing statutes themselves make no reference to "intent" and the rules of the State Board of Equalization refer only to the "stated" intent of the owner;
- 4) Whether the trial court erred in failing to construe the tax statutes liberally in favor of the taxpayer and strictly against the taxing authority, when it found that the evidence presented a "tie" between the facts that showed Holtkamp's

greenhouses are moveable and those that show the greenhouses are permanently attached;

5) Whether the trial court erred and/or abused its discretion when it changed its conclusions as to the relative weight of and ultimate proof shown by the undisputed facts, that is, from there being a “tie” to being no tie as to the movability or permanent attachment of Holtkamp’s greenhouses, when on motion for reconsideration Holtkamp pointed out that a “tie” should result in the taxing statutes being construed in favor of the taxpayer;

6) Whether the trial court erred in failing to view the undisputed facts in the light most favorable to Holtkamp in granting summary judgment against it; and

7) Whether the trial court erred in holding that one of Holtkamp’s witnesses was an expert witness rather than a fact witness, when the proffered testimony related specifically to the proffered witness’s occupation or line of business and day-to-day activities, the facts of which are within the common understanding of lay persons.

“[J]udicial review of a Board of Equalization decision clearly falls under the Uniform Administrative Procedures Act.” *Spring Hill, L.P. v. Tenn. State Bd. of Equalization*, No. M2001-02683-COA-R3-CV, 2003 WL 23099679, at *4 (Tenn. Ct. App. Dec. 31, 2003), *no perm. app.* (citing *Willamette Indus., Inc. v. Tenn. Assessment Appeals Comm’n*, 11 S.W.3d 142, 147 (Tenn. Ct. App. 1999)). Accordingly, a reviewing court must apply the narrow standard of review contained in the Act. *Id.* (citing *Wayne County v. Tenn. Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 279 (Tenn. Ct. App. 1988)). Under this standard, as codified in Tennessee Code Annotated § 4-5-322(h), a reviewing court may reverse or modify an administrative decision if the rights of the petitioner have been prejudiced due to administrative findings, inferences, conclusions or decisions that are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.

T.C.A. § 4-5-322(h) (2005). The statute admonishes that, “[i]n determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its

weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.” T.C.A. § 4-5-322(h)(5)(B) (2005).

This standard of review applies to the appellate court as well as the trial court. *Spring Hill, L.P.*, 2003 WL 23099679, at *5 (citing *Terminix Int’l Co., L.P. v. Tenn. Dept. of Labor*, 77 S.W.3d 185, 191 (Tenn. Ct. App. 2001)). The “substantial and material evidence” standard “requires something less than a preponderance of the evidence but more than a scintilla or glimmer.” *Id.* (quoting *Wayne County*, 756 S.W.2d at 280). When resolution of an issue calls for the interpretation and application of a statute, this constitutes a legal conclusion, which is reviewed *de novo* with no presumption of correctness. *Id.* (citing *King v. Pope*, 91 S.W.3d 314, 318 (Tenn. 2002)).

ANALYSIS

Ambiguity of Statutory Language

Holtkamp first argues that the trial court erred in looking beyond the language of the applicable taxation statute, Tennessee Code Annotated § 67-5-501, to the common law of fixtures, because the statutory language at issue is clear and unambiguous. Holtkamp insists that the application of the statutory language to the facts at bar can lead to only one conclusion - that the greenhouses are personal property.

Tennessee Code Annotated § 67-5-801 provides that “[f]or the purposes of taxation, all real property, . . . , shall be classified according to use and assessed,” and then lists the four categories of real property with the respective assessment percentages.¹⁰ T.C.A. § 67-5-801 (2006). In order to classify and assess the property, Tennessee Code Annotated § 67-5-501 sets forth the following definitions:

¹⁰The categories of real property are:

- (1) PUBLIC UTILITY PROPERTY. Public utility property shall be assessed at fifty-five percent (55%) of its value;
- (2) INDUSTRIAL AND COMMERCIAL PROPERTY. Industrial and commercial property shall be assessed at forty percent (40%) of its value;
- (3) RESIDENTIAL PROPERTY. Residential property shall be assessed at twenty-five percent (25%) of its value; and
- (4) FARM PROPERTY. Farm property shall be assessed at twenty-five percent (25%) of its value.

T.C.A. § 67-5-801(a) (2006).

(2) “Commercial and industrial tangible personal property” includes personal property, such as goods, chattels and other articles of value that are capable of manual or physical possession, and machinery and equipment that are:

(A) Used essentially and principally for the commercial or industrial purposes or processes for which they are intended; and

(B) If affixed or attached to real property, can be detached without material injury to such real property;

....

(7) “Personal property” includes every species and character of property that is not classified as real property;

....

(9)(A) “Real property” includes lands, tenements, hereditaments, structures, improvements, movable property assessable under § 67-5-802, or machinery and equipment affixed to realty, except as otherwise provided for in this section, and all rights thereto and interests therein, equitable as well as legal;

....

(12) “Tangible personal property” includes personal property such as goods, chattels, and other articles of value that are capable of manual or physical possession, and certain machinery and equipment, separate and apart from any real property, and the value of which is intrinsic to the article itself.

T.C.A. § 67-5-501 (2006).

Holtkamp characterizes these statutory definitions as unambiguous, leading inexorably to the conclusion that the greenhouses are personal property. It cites the Supreme Court’s statement in *Carson Creek Vacation Resorts, Inc. v. Department of Revenue*: “Where the language contained within the four corners of a statute is plain, clear, and unambiguous . . . , ‘the duty of the courts is simple and obvious, namely, to say *sic lex scripta*, and obey it.’” *Carson Creek Vac. Resorts, Inc. v. Dept. of Rev.*, 865 S.W.2d 1, 2 (Tenn. 1993) (quoting *Miller v. Childress*, 21 Tenn. (2 Hum.) 319, 321-22 (1841)). Pointing to the above definitions of “personal property” and “tangible personal property,” Holtkamp argues:

The undisputed facts show that Holtkamp’s greenhouses are chattels, articles of value, and/or equipment capable of physical possession separate and apart (by removal and use or sale separate) from the real property and that the value of each greenhouse is “intrinsic” to itself (for re-use or re-sale). . . . The greenhouses are used essentially and principally for the commercial purpose of greenhouse operations for which they are intended and, although attached to real property (the greenhouse site), can be detached without material injury

to such real property. Thus, the greenhouses satisfy the definition of “tangible personal property” under Tenn. Code Ann. § 67-5-501(12).

If the greenhouses are commercial, Holtkamp contends, “they are undeniably ‘commercial tangible personal property’ within the meaning of the statute.” Holtkamp insists that this Court need not consider the statutory definition of “real property,” set forth above, because the greenhouses clearly and unambiguously are excepted out of the definition of real property. *See* T.C.A. § 67-5-501(9)(A) (2006) (“except as otherwise provided for in this section”). Holtkamp asserts: “No other conclusion is possible.”¹¹

We must respectfully disagree. From our review of the statutory language and the facts in this case, as well as the zig-zagging results of the administrative decisions below, we must conclude that the statutes as applied to these facts are far from “unambiguous.” In particular, we decline to consider only the definitions of “personal property,” “tangible personal property” and “commercial and industrial tangible personal property,” codified in subsections (7), (12) and (2), respectively, without also considering whether the greenhouses fit within the definition of “real property” contained in the same statute. Therefore, we find no error in the trial court’s conclusion that it was necessary to go beyond the “four corners of the statute.” *Carson Creek*, 865 S.W.2d at 2.

Common Law of Fixtures

The State Board submits that the common law of fixtures controls whether the greenhouses should be considered real or personal property. In support, it cites *ANR Pipeline Co. v. Tenn. Bd. of Equalization*, No. M2001-01098-COA-R12-CV, 2002 WL 31840689 (Tenn. Ct. App. Dec. 19, 2002), *perm. app. denied* June 30, 2003, in which this Court applied the common law of fixtures to the property classification issue presented in this case. In *ANR Pipeline Co.*, the Office of State Assessed Properties classified the petitioner taxpayers’ subterranean petroleum pipelines as real property for taxation purposes. *ANR Pipeline Co.*, 2002 WL 31840689, at *1. Ultimately, the taxpayers appealed the classification to this Court. On appeal, the Court noted that the resolution of the classification issue turned on the interpretation of the definitions of “real property” and “tangible personal property” in Tennessee Code Annotated § 67-5-501. *Id.* at *2-3. The Court then stated: “In this jurisdiction, the law of fixtures is controlling of the issue at Bar,”

¹¹In support of its argument, Holtkamp cites *Gen. Oils Co. v. Ramsey*, No. 01A01-9504-CH-00153, 1996 WL 11201 (Tenn. Ct. App. Jan. 12, 1996). However, in denying permission to appeal in *Gen. Oils*, the Supreme Court noted that it concurred “in results only” (DCRO). Under Rule 4(E)(3) of the Supreme Court Rules, an opinion with the “DCRO” designation is deemed to have “no precedential value.” Thus, we decline to consider it on appeal.

and utilized the common law definitions and principles to interpret the statutory terms.¹² *Id.* at *3-4. In light of *ANR Pipeline Co.*, then, we look to the common law of fixtures to determine whether Holtkamp’s greenhouses are “affixed or attached to real property” or “separate and apart from any real property” under Tennessee Code Annotated § 67-5-501.

Attached or Affixed

In applying the common law of fixtures to the facts at bar, both parties cite two cases from our Supreme Court, *Harry J. Whelchel Co. v. King*, 610 S.W.2d 710 (Tenn. 1980), and *Magnavox Consumer Elecs. v. King*, 707 S.W.2d 504 (Tenn. 1986). The trial court also relied in part on these cases. As such, our analysis begins with them.

In *Harry J. Whelchel Co. v. King*, 610 S.W.2d 710 (Tenn. 1980), the issue before the Court was whether grain bins used by farmers to store and preserve harvested grain were considered to be personal or real property for tax purposes. *See id.* at 713. At the outset of its analysis, the Court noted that the grain bins were assembled on the farm “like an erector set.” First, a cylindrical shell body was formed from bolted metal sheets. The cylindrical shell was then attached to a “simple concrete pad” with six anchor bolts. Typically, installation of a grain bin required the efforts of six persons working for a full day. Disassembly of the grain bin for removal took about sixty percent of the time needed for assembly. *Id.* at 711-12.

The *Whelchel* court summarized the applicable common law as follows:

In Tennessee only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the uses to which they are put, they are presumed to be permanently annexed, or a removal thereof would cause serious injury to the freehold. The usual test is said to be the intention with which a chattel is connected with realty. If it is intended to be removable at the pleasure of the owner, it is not a fixture.

Id. at 713-714 (quoting *Memphis Housing Auth. v. Memphis Steam Laundry-Cleaner, Inc.*, 463 S.W.2d 677 (Tenn. 1971)) (citations omitted).

Applying this legal principle to the particular characteristics of the grain bins, the Court noted that an individual bin could “be disassembled and hauled away at less expense

¹²*ANR Pipeline Co.* held that the pipelines at issue were personal property under Tennessee Code Annotated § 67-5-501. *ANR Pipeline Co.*, 2002 WL 31840689, at *4. This holding was effectively nullified when § 67-5-501 was amended in 2004 to expressly include “pipelines” in the definition of “real property.” *Colonial Pipeline Co. v. Morgan*, 474 F.3d 211, 214-15 (6th Cir. 2007).

and in less time than was required to erect it in the first instance, and without ‘serious injury to the freehold.’” *Id.* at 714. Once relocated, it observed, the bin would leave only the concrete base, which evidence showed “could be broken up by a bulldozer and hauled away in a matter of hours.” *Id.*

The *Whelchel* Court found that these circumstances were consistent with the farmers’ stated intent not to make the bins a permanent part of the real property. Applying “objective tests,” the Court found that the grain bins remained personal property.¹³ *Id.*

In *Magnavox Consumer Elecs. v. King*, 707 S.W.2d 504 (Tenn. 1986), at issue was whether a fuel tank was considered to be real or personal property. *Id.* at 506. The 500,000 gallon tank was mounted on a concrete pad, secured by four metal rods, and then connected to a building by a steel pipe. The tank could be moved, but to do so, “it would have to be moved as if it were a building.” *Id.* at 507.

¹³Holtkamp asserts that if the owner’s intent is to be taken into account, then only the stated intent is relevant under the State Board’s Rules. The pertinent Rule provides:

(1) In determining whether property should be assessed as real or personal, the following factors should be considered:

(a) The apparent movability or permanency of the item in its location or attachment to the land or structure. The cost of moving the item and the amount of damage that will be incurred to the item, the land, or the improvement if the item is removed should be weighed against the value of the item of property that is being considered. If the value of the item exceeds the moving cost and the amount of damage incurred, it is more likely to be considered personal property.

(b) The primary purpose which the item serves. This factor would most generally concern an item that forms a part, or segment, of a series of functions in a manufacturing and/or processing system. If the item is more or less special purpose in nature and its practical use would not enhance the total property if the present or a similar manufacturing processing system were not there, it is more likely to be considered personal property.

(c) *The stated intent of the owner.* This element will come into focus most frequently where leased premises are involved, although it must occasionally be considered where premises are owner-occupied. If the intent of the owner is to move the item upon relocation of the business, the item is more likely to be considered personal property, provided that such a move would be probable, practical, and cost-effective.

TENN. COMP. R. & REGS. 0600-5-.09 (1999) (emphasis added). Thus, the Rule lists the owner’s stated intent as a factor, but does not indicate that stated intent is determinative. The Rule directs the assessor to consider objective facts such as whether a move “would be probable, practical, and cost-effective.”

The *Magnavox* Court relied upon the recitation of fixture law in *Harry J. Whelchel Co.*, quoted above, and looked at the owner's intent objectively. *Id.* The Court observed: "The tank is attached to a permanent structure and securely anchored to the freehold. Its sheer size . . . indicates it was not intended to be 'removable at the pleasure of the owner.'" Thus, the *Magnavox* Court looked at the circumstances objectively and found that the fuel tank was a fixture. *Id.*

Applying these principles to the facts in the case at bar, the trial court found that numerous facts indicated that Holtkamp intended for the greenhouses to be permanent. These included the enormous amount of square footage covered by the greenhouses, the utilities that connected the greenhouses to the real property, the amenities in the greenhouses such as restrooms and lunchrooms for employees, the concrete tunnel connecting the greenhouses, and the fact that Holtkamp owned both the greenhouses and the land on which they were located.¹⁴ The trial court found that it was "unlikely" that an owner who intended for the greenhouses to be temporary would put in such amenities and would have the greenhouses in place "for decades." Acknowledging that there was some evidence of movability, the trial court found that it was outweighed by evidence that Holtkamp intended for the greenhouses to be permanent.

We agree with the trial court's analysis and conclude that the greenhouses are "affixed" to the real property. Thus, the greenhouses fit into the statutory definition of "real property," as "machinery and equipment affixed to realty. . . ." T.C.A. § 67-5-501(9)(A) (2006).

Detachment From Land

Tennessee Code Annotated § 67-5-501(9)(A) states that the term "real property" includes "machinery and equipment affixed to realty, *except as otherwise provided for in this section, . . .*" T.C.A. § 67-5-501(9)(A) (2006) (emphasis added). Thus, we must consider whether the greenhouses fit within one of the statutory exceptions. Holtkamp argues on appeal that the greenhouses fit within the exception for "commercial and industrial tangible personal property":

¹⁴In *ANR Pipeline Co.*, the owner of the pipeline had an easement to install it, but did not own the land in which the pipeline was buried. The Court found that the pipeline company retained ownership of the pipe and that the landowner could not claim ownership of the pipe because it was buried in his land. It observed that the pipe was treated as the property of the pipeline company "which they can remove at their pleasure," and described this fact as determinative to prove the intent of the parties. *ANR Pipeline Co.*, 2002 WL 31840689, at *4. Thus, the Court found that the pipe was personal property. *Id.*

(2) “Commercial and industrial tangible personal property” includes personal property, such as goods, chattels and other articles of value that are capable of manual or physical possession, and machinery and equipment that are:

(A) Used essentially and principally for the commercial or industrial purposes or processes for which they are intended; and

(B) If affixed or attached to real property, can be detached without material injury to such real property;

T.C.A. § 67-5-501(2) (2006). Thus, even if the greenhouses are “affixed or attached” to the underlying real property, they are nevertheless classified as personal property under this provision if they can be detached without material injury to the real property. Holtkamp asserts that detachment of the greenhouses in this case is less likely to materially injure the underlying real property than detachment of the pipelines found to be personal property in *ANR Pipeline Co.*¹⁵

We must respectfully disagree. The seven greenhouses encompass enormous square footage, 436,000 square feet or almost a third of the acreage of Holtkamp’s entire 31-acre tract.¹⁶ The frame of the greenhouses consists of metal poles, with each bolted to a concrete post that extends two feet into the ground. The ground underneath the greenhouses is honeycombed with concrete of varying thickness and configuration, with footings, concrete slab flooring and walkways throughout. A subterranean concrete tunnel connects the greenhouses to each other and various utilities connect the greenhouses to the realty. The trial court observed that “moving the greenhouses would not be easy,” and we agree. Under these facts and circumstances, we must conclude that the greenhouses do not fit within the exception for “commercial and industrial tangible personal property,” and thus should be classified as “real property.”

Alteration of Trial Court Order

Holtkamp argues that the trial court erred or abused its discretion in modifying its final order in response to Holtkamp’s motion to alter or amend the judgment. Holtkamp asserts that the trial court should have simply granted a judgment in favor of Holtkamp, because Holtkamp argued persuasively in its motion that a “tie” in the evidence should result in a judgment for the taxpayer.

¹⁵The *ANR Pipeline Co.* court did not consider the issue of whether the pipeline fit within the exception for “commercial and industrial tangible personal property.”

¹⁶Photographs of the greenhouses in the appellate record confirm their considerable size.

“The courts have almost universally recognized that a judgment remains within the control of the trial judge until it has been on file for thirty days.” *Arendale v. Arendale*, No. W2005-02755-COA-R3-CV, 2008 WL 481943, at *1 (Tenn. Ct. App. Feb. 22, 2008), *perm. app. denied* May 19, 2008. Moreover, Rule 59.05 permits a trial court to alter or amend a judgment on its own initiative within thirty days of entry. TENN. R. CIV. P. 59.05. When a trial court alters or amends a prior order, the subsequent order supercedes the prior. *See Edwards v. Blanco Lumber Co., Inc.*, 101 S.W.3d 69, 75 (Tenn. Ct. App. 2002). We find that Holtkamp’s argument is without merit, and any issues predicated on the language stricken from the trial court’s initial order are misplaced.

This holding pretermits all other issues raised on appeal.

CONCLUSION

The decision of the trial court is affirmed. The costs of this appeal are taxed to the Appellant Hermann Holtkamp Greenhouses, Inc., and its surety, for which execution may issue if necessary.

HOLLY M. KIRBY, JUDGE